

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re	§	No. 23-32924
	§	CHAPTER 11
50 CROSBY PINES, LTD., <i>et al</i> ¹	§	Jointly Administered

GULF CAPITAL LENDING, LLC’S
MOTION TO DISMISS, CONVERT TO 7, OR DISPOSSESS DEBTOR IN POSSESSION
REGARDING 48 HIGHLAND SHORES, LTD. CASE 23-33843

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Gulf Capital Lending, LLC, (“GCL”) and files its *Motion to Dismiss, Convert to 7, or Dispossess Debtor in Possession Regarding 48 Highland Shores, Ltd., Case 23-33843* and would show as follows.

1. GCL is owed \$1,539,412.00 on its claim 3-1 which is secured by approximately 42 acres of land in or near Highland, Texas (“Property”).

2. Debtor has scheduled the value of the Property at \$5,250,000.00. **Case 23-33843, DK# 11, p. 6.**

¹ The Debtors in these Chapter 11 cases, along with the last 4 digits of their respective Employer Identification Numbers, are: (a) 50 Crosby Pines, Ltd. (No. 23-32924, EIN x2512); (b) 48 Highland Shores, Ltd. (No. 23-33843, EIN x4869); (c) 53 Eagles Cove, Ltd. (No. 23-33844, EIN x8026); (d) 171 Lone Stag, Ltd. (No. 23-33845, EIN x2240); (e) 80 Crosby Terrace, Ltd. (No. 23-35189, EIN x5879); (f) 133 Lone Wolf, Ltd. (No. 23-35190, EIN x7864), and (g) 100 Tennessee Township, Ltd. (No. 23-35192, EIN x8215).

3. There are several secured creditors scheduled on the Property:

- Brightland Homes \$700,000.00
- Goose Creek ISD \$30,647.70
- Harris County \$9,821.32
- Next Level Capital \$1,539,003.97
- Nuway Homes \$670,000.00

Adjusted scheduled creditor sum \$2,949,472.99

4. There are very few unsecured creditors listed and the total sum amounts to \$415.50.

DK# 11, p. 15.

Basis to Dismiss/Convert/Appoint Trustee

A. Bad Faith

5. 11 U.S.C. § 1112(b) provides that on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

6. Cause may include the filing of bankruptcy in bad faith. *Elmwood Dev. Co. v. G.E. Pension Trust (In re Elmwood Dev. Co.)*, 964 F.2d 508, 510 (5th Cir. 1992); *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072-73 (5th Cir. 1986).

7. Factors demonstrating bad faith under *Little Creek* include:

The debtor has one asset, such as a tract of undeveloped or developed real property. The secured creditors' liens encumber this tract. There are generally no employees except for the principals, little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments pursuant to 11 U.S.C. §§ 361, 362(d)(1), 363(e), or 364(d)(1). Typically, there are only a few, if any, unsecured creditors whose claims are relatively small. The property has usually been posted for foreclosure because of arrearages on the debt and the debtor has been unsuccessful in defending actions against the

foreclosure in state court. **Id, at 11.**

8. In the instant case, this is a single asset real estate filing. There are no employees, little to no cash flow, and no available sources of income to sustain a plan or make the required payments. All of these factors demonstrate a lack of good faith in the filing of the bankruptcy case.

B. Additional Factors

9. 11 U.S.C. § 1112(b)(4) contains a non-exhaustive list of examples of cause meriting conversion or dismissal. GCL would show the following apply: § 1112(b)(4)(A), (B), (C), and (I).

10. ***(4)(A) – substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation*** – 23-33843 is single asset real estate debtor case. The Debtor has essentially no employees, funds, no income, and is operating negatively.

October 2023 - The monthly operating report filed in case 23-33843, **DK# 16**, reflects for the month of October 2023 an opening balance of accounts as \$619.77, **no cash receipts**, cash disbursements of \$600.00, and remaining balance at the end of \$19.77

November 2023 – The monthly operating report filed in case 23-33843, **DK# 17**, reflects the month of November an opening balance of \$19.77, money earned of \$100.00, and an ending balance of \$119.77. **It also reflects unpaid bills of \$41,733.34.**

December 2023 – The monthly operating report filed in case 23-33835, **DK# 19**, reflects for the month of December 2023 an opening balance of \$119.77, **no cash receipts**, cash disbursements of \$15.00, for an ending balance of \$104.77. **It also reflects unpaid bills of \$93,341.14.**

11. The entirety of the proposed plan in this case rests on Lenders on multiple properties in multiple cases permitting their 1st position liens on properties to be subordinated by a new DIP lender, Legalist, who it is clear will only advance funds to the Debtor(s) if it can gain a superior first lien position on all the properties. Multiple creditors have objected to such proposition, including GCL. It is not likely the plan could or would be confirmed and meanwhile the Property subject to GCL's lien is rapidly losing value given the accruing interest, unpaid bills, tax, and costs.

12. **(4)(B) – gross mismanagement of the estate** – The debtor earns no income and is undeveloped land. The proposed development is contingent upon platting and approval for roads, utilities, and other development necessities. There appears to be no insurance on the Property, including liability insurance. The Debtor has no funds or ability to manage this estate.

13. Further, Debtor has scheduled \$1,370,000.00 “home builder” loans as to 48 Highland. These capital loans were designated for the development of the property. It does not appear 48 Highland has substantially began such development of the property, yet 48 Highland does not reflect possession of the \$1,370,000.00 any longer. The Debtor is only showing \$19.77 in its checking account as of petition date. **Case 23-33843, DK# 11, p. 1.**

14. **(4)(C) – Failure to maintain appropriate insurance that poses a risk to the estate or to the public.** Paragraph C.6. of the Security Instrument Debtor entered with GCL requires the maintenance of insurance. No proof of insurance has been provided.

15. **(4)(I) – Failure to maintain taxes.** Debtor failed to pay 2023 taxes. While proposed in the plan for treatment, there is no income to actually pay 2023 and future taxes. The ability to do so hinges upon the proposed DIP financing which would require multiple creditors to subordinate their first liens on multiple properties against multiple debtors, something which already multiple creditors have objected to and indicated they will not do.

CONCLUSION

This case was filed in bad faith to delay foreclosure. The Debtor has no employees, earns essentially no income, but is repeatedly accruing monthly expenses it is not paying and has no ability to pay. There is no viable plan of reorganization here and the longer the case delays all the creditors from their right to seek contractual remedies, the more the estate is rapidly depleted. Dismissal, conversion, or appointment of a new trustee is proper and necessary in this case.

PRAYER

Wherefore, premises considered, GCL prays the Court dismiss this case, convert it a Chapter 7 , or appoint a trustee to dispossess Debtor, and for such further and other relief as the Court deems just.

Respectfully submitted:

/s/ Michael Weems

Dominique Varner TBA #00791182/FIN 18805

Direct: 713-590-4218, dvarner@hwa.com;

Michael Weems TBA #24066273

Direct: 713-590-4222, mweems@hwa.com

HUGHES, WATTERS & ASKANASE, L.L.P.

1201 Louisiana, 28th Floor

Houston, Texas 77002

Telephone (713) 590-4200

Fax (713) 590-4230

Attorney for Movant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by electronic mail or by first class U. S. Mail, postage prepaid on the 20 day of February, 2024, to the following:

DEBTOR
50 CROSBY PINES, LTD., ET AL
340 N. SAM HOUSTON PARKWAY, SUITE
140
HOUSTON, TX 77060

DEBTORS' ATTORNEY
WILLIAM P. HADDOCK
PENDERGRAFT & SIMON
2777 ALLEN PARKWAY, SUITE 800
HOUSTON, TX 77019

48 Highland Shores, Ltd.
340 N. Sam Houston Parkway, Suite 140
Houston, TX 77060

OFFICE OF THE U.S. TRUSTEE
515 RUSK AVENUE, SUITE 3516
HOUSTON, TX 77002

See attached list.

/s/ Michael Weems

Dominique Varner

Michael Weems

TBA #00791182/FIN 18805

TBA #24066273

Label Matrix for local noticing 0541-4 Case 23-32924 Southern District of Texas Houston Tue Feb 13 16:36:18 CST 2024	100 Tennessee Township, Ltd. 340 N. Sam Houston Parkway, Suite 140 Houston, TX 77060-3324	133 Lone Wolf, Ltd. 340 N. Sam Houston Parkway, Suite 140 Houston, TX 77060-3324
171 Lone Stag, Ltd. 340 N. Sam Houston Parkway, Suite 140 Houston, TX 77060-3324	48 Highland Shores, Ltd. 340 N. Sam Houston Parkway, Suite 140 Houston, TX 77060-3324	50 Crosby Pines, Ltd. 340 N. Sam Houston Parkway, Suite 140 Houston, TX 77060-3324
53 Eagles Cove, Ltd. 340 N. Sam Houston Parkway, Suite 140 Houston, TX 77060-3324	80 Crosby Terrace, Ltd. 340 N. Sam Houston Parkway, Suite 140 Houston, TX 77060-3324	Brightland Homes, Ltd. f/k/a Gehan Homes, Ltd. c/o Howard Marc Spector 12770 Coit Rd, St 850 Dallas, TX 75251
Goose Creek CISD And Lee College District c/o Reid Strickland & Gillette LLP PO Box 809 Baytown, TX 77522-0809	(p)HARRIS COUNTY ATTORNEY'S OFFICE P O BOX 2928 HOUSTON TX 77252-2928	Harris County ESD #05 c/o Tara L Grundemeier Linebarger Goggan Blair & Sampson LLP PO Box 3064 Houston, TX 77253-3064
Harris County ESD #80 c/o Tara L. Grundemeier Linebarger Goggan Blair & Sampson LLP PO Box 3064 Houston, TX 77253-3064	Space City Finance LLC c/o HooverSlovacekLLP 5051 Westheimer, Ste 1200 Galleria Tower 2 Houston, TX 77056-5839	4 United States Bankruptcy Court PO Box 61010 Houston, TX 77208-1010
Anglia Homes, LP Attn. Thomas Manners 1575 Sawdust Rd. Spring, TX 77380-4248	Anglia Homes, LP c/o Catherine Funkhouser Steptoe & Johnson PLLC 1780 Hughes Landing Blvd, Suite 750 The Woodlands, TX 77380-4089	Anglia Homes, LP c/o Catherine Funkhouser Steptoe & Johnson PLLC 1780 Hughes Landing Boulevard, Suite 750 The Woodlands, Texas 77380-4089
Arete Real Estate & Development Company 340 N Sam Houston Pkwy E Suite 140 Houston, TX 77060-3324	Crosby ISD c/o Goose Creek CISD Tax Office PO Box 2805 Baytown, TX 77522-2805	Danny C. Moore & Brenda L. Moore c/o Christian M. Sternat Attorney at Law 1111 North Loop West, Suite 1115 Houston, Texas 77008-4700
Danny Moore & Brenda Moore c/o Christian M. Sternat 1111 North Loop West, Suite 1115 Houston, Texas 77008-4700	FDR Consulting LLC 4311 LaBranch Houston, TX 77004-4850	Gehan Homes, Ltd. Attn. Chris Lynch & Kent Mitchell 3815 S. Capital of Texas Hwy., Suite 275 Austin, TX 78704-6652
HUFFMAN INDEPENDENT SCHOOL DISTRICT PO BOX 2805 BAYTOWN TX 77522-2805	Harris County Tax Assessor-Collector PO Box 4663 Houston, TX 77210-4663	Internal Revenue Service Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346
Lawyer's Aid Service, Inc. 505 W. 15th Street Austin, TX 78701-1511	Menyu Wong 2507 Plantation Lane Sugar Land, TX 77478-3606	Space City Finance, LLC c/o Steven A. Leyh Hoover Slovacek, LLP 5051 Westheimer, Suite 1200 Houston, Texas 77056-5839

Stevens Technical Services Inc
14531 FM 529, Suite 160
Houston, TX 77095-5287

Texas Land Engineers
7102 W. Sam Houston Pkwy. North, Suite 2
Houston, TX 77040-3165

US Trustee
Office of the US Trustee
515 Rusk Ave
Ste 3516
Houston, TX 77002-2604

WALLER INDEPENDENT SCHOOL DISTRICT
1918 KEY STREET
WALLER TX 77484-8400

Windrose Land Surveying
PO Box 74133
Cleveland, OH 44194-4133

Zandur Real Estate, Inc.
c/o R. Adam Swick
Akerman LLP
500 West 5th Street, Suite 1210
Austin, TX 78701-3831

Brenda Moore
c/o Christian M. Sternat
1111 North Loop West, Ste 1115
Houston, Tx 77008-4700

Danny Moore
c/o Christian M. Sternat
1111 North Loop West, Ste 1115
Houston, Tx 77008-4700

Leonard H Simon
Pendergraft Simon, LLP
The Riviana Building
2777 Allen Parkway, Suite 800
Houston, TX 77019-2129

William P Haddock
Pendergraft & Simon
2777 Allen Parkway
Suite 800
Houston, TX 77019-2129

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Harris County
Harris County Attorney's Office
1019 Congress
15th Floor
Houston, TX 77002

(d)Harris County Tax Office
P.O. Box 2928
Houston, TX 77252

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

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(u)DFH Coventry LLC

(u)Gulf Capital Lending, LLC

(u)Hughes, Watters, Askanase, LLP

(u)KB HOME Lone Star Inc

(u)Legalist, Inc.

(u)Menyu Wong

(u)NLCG Private Lending Fund, LLC

(u)Weekley Homes, LLC

(u)Zandur Real Estate, Inc.

(d)Harris County ESD #05
c/o Tara L. Grundemeier
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, Tx 77253-3064

(d)Harris County ESD #80
c/o Tara L. Grundemeier
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, Tx 77253-3064

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